



A30571-A-PCT-USA-A (070165.0582)
PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bot *et al* Examiner : Woitach, Joseph T
Serial No. : 09/801,540 Group Art Unit: 1632
Filed : March 8, 2001
For : IMMUNIZATION OF INFANTS

**PETITION TO CORRECT PRIORITY DATE PURSUANT TO 37 C.F.R. §
1.78(a)(3)**

I hereby certify that this paper is being deposited with the United States Postal Service via First Class Mail on August 26, 2005 and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

Lisa B. Kole
Attorney Name

Lisa B. Kole
Signature

35,225

Registration No.

August 25, 2005

Date of Signature

Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria VA 22313-1450

Sir:

A Petition to correct priority date pursuant to 37 C.F.R. §

1.78(a)(3), filed by the Applicants December 6, 2004 was dismissed by the Office of Petitions in a Official Action mailed May 24, 2005. Dismissal of the petition was for alleged non-compliance under 37 C.F.R. § 1.78(a)(3) which requires reference under 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2) of prior filed

application(s). An amendment concurrently filed with the petition to correct priority date, to add the prior-filed application U.S. Patent Application No. 08/755,034, in the specification of the instant application was deemed not acceptable. The amendment was found to be not acceptable because it incorporates the prior-filed application by reference and is thereby considered to cause the introduction of new matter into the instant application. The Applicants were advised to provide a substitute amendment which deletes "the incorporation by reference" statement along with a renewed petition under 37 C.F.R. 1.78(a)(3). A substitute amendment which deletes the incorporation by reference statement is submitted herewith.

Applicants herein repeat their petition to correct the priority date of this application due to an unintentionally delayed claim for priority under 35 U.S.C. §120. Applicants respectfully request that priority be granted to International Patent Application No. PCT/US97/21687, filed November 27, 1997, and to United States Patent Application No. 08/755,034, filed November 22, 1996, now United States Patent No. 6,204,250.

As detailed in their prior Petition, the instant application was filed March 8, 2001 as a continuation-in-part of U.S. Patent Application Serial No. 09/308,511 of Bot *et al.*, filed May 19, 1999 ("the '511 application"). In the transmittal of the instant application, it was indicated that the specification should be amended to claim priority to the '511 application. On the filing date, an unexecuted Combined Declaration and Power of Attorney was also submitted,

containing a claim of priority not only to the '511 application, but also to United States Patent Application No. 08/755,034, filed November 22, 1996 ("the '034 application"), then pending (which was to issue shortly thereafter on March 20, 2001). Reference to the intervening PCT application, PCT/US97/21687, was absent from both documents.

On October 22, 2001, an executed Declaration and Power of Attorney was submitted, again claiming priority to both the '511 and '034 application. Although a filing receipt was issued March 13, 2002 stating only priority to the '511 application, it is believed that Applicants believed (erroneously) that priority had been accorded. This error was reinforced by the Examiner's statement in the Official Action dated October 8, 2003, that:

This application filed March 8, 2001 is a continuation-in-part of application 09/308,511 filed May 19, 1999, which is a 371 national stage filing of PCT/US97/21687, filed November 21, 1997, which claims priority to application 08/755,034 filed November 22, 1996, now patent 6,204,250.

In the October 8, 2003 Official Action, the Examiner did not question the priority issue, but merely said that "the priority information must be present in the first line of the specification, however this information in the specification as amended is preceded by other information."

It was only upon receipt of the Official Action dated October 4, 2004 that Attorneys for Applicants realized that a proper claim for priority had not been made. In addition, it was realized, for the first time, that priority to International Patent Application PCT/US97/21687, filed November 27, 1997, had not been claimed in the Combined Declaration and Power of Attorney. When

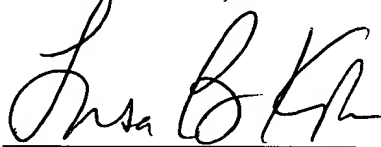
these errors, which were made inadvertently and without deceptive intent, were recognized, a Petition, mailed December 6, 2004 was promptly filed. The entire delay between the date the claim was due and the date the claim was (properly) filed was unintentional.

Because Applicant's are concurrently submitting an amendment which obviates the basis for denying the previously filed Petition, Applicants respectfully request that this Petition to Correct Priority Date under 37 C.F.R. § 1.78(a)(3) to PCT/US97/21687 and the '034 application be granted.

Applicants herewith enclose a check for \$ 2,275.00, including \$ 395.00 and \$1,370.00 which represent the required fee set forth under 37 C.F.R. § 1.17(e) for a Request for Continued Examination for a small entity and 37 C.F.R. § 1.17(t) for a Petition to the Commissioner, respectively.. The Commissioner is hereby authorized to charge payment of fees or to credit any overpayment associated with this communication to Deposit Account No. 02-4377. Two copies of this paper are enclosed.

Respectfully submitted,

BAKER BOTTS, L.L.P.



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